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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/874,218	06/05/2001	Joseph H. Contiliano	ETH1536	5741

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EXAMINER

MATTHEWS, WILLIAM H

ART UNIT PAPER NUMBER

3738

DATE MAILED: 03/24/2005

Please find below and/or attached an Office communication concerning this application or proceeding.



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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/874,218
Filing Date: June 05, 2001
Appellant(s): CONTILIANO ET AL.

William K. Wissing
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 2-28-05.

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(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is correct.

(4) *Status of Amendments After Final*

No amendment after final has been filed.

(5) *Summary of Invention*

The summary of invention contained in the brief is correct.

(6) *Issues*

The appellant's statement of the issues in the brief is correct.

(7) *Grouping of Claims*

The rejection of claims 1 and 3-12, 2 and 13, and 14 stand or fall together because appellant's brief does not include a statement that this grouping of claims does not stand or fall together and reasons in support thereof. See 37 CFR 1.192(c)(7).

(8) *Claims Appealed*

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) Prior Art of Record

2001/0008980	Gresser et al.	7-2001
2002/0120348	Melican et al.	8-2002

(10) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

1. Claims 1-5,7-11,13, and 14 are rejected under 35 U.S.C. 102(e) as being anticipated by Gresser et al. US 2001/0008980.

Gresser et al. discloses in Figures 4a-4b and paragraphs 8-10,33,38,47, and 71-72 a resorbable tissue scaffold implant comprising a foam tissue scaffold component partially encapsulating a fixation component comprising threads 41 serving as anchors. Pores or through holes (43-46) fulfill the open-cell pore structure. Hydroxyapatite is described in paragraph 47 as a reinforcement component.

2. Claims 1-14 are rejected under 35 U.S.C. 102(e) as being anticipated by Melican et al. US 2002/0120348.

Melican et al. discloses in Figures 1-5 and paragraphs 10-12,22-31,36,41-42,46-51, and 59-63 multiple embodiments of a resorbable tissue scaffold implant comprising a open cell porous foam tissue scaffold component 12, a partially encapsulated fixation component, and reinforcement components. Reinforcement may be accomplished by reinforcement mesh(s) 14, reinforcement solids in the foam (paragraphs 46-51), and/or by a fibrous layer (paragraphs 59-63). The fixation component as claimed, may be the fibrous layer and/or reinforcement mesh(s) 14. The fibrous layer may include anchors such as non-absorbable staples.

(11) Response to Argument

Claims 1-5,7-11,13, and 14 rejected under 35 U.S.C 102(e) in view of Gresser et al.

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Applicant contends Gresser et al. only discloses (page 6 of Appeal Brief) foam scaffolds within the main body of Figure 4a and therefore Gresser et al. lacks a foam scaffold substantially encapsulating a fixation component. Examiner disagrees because paragraphs 71-72 clearly disclose the main body may be coated with (in addition to filled with) a foam scaffold. Applicant further contends, with regard to claim 14, that reinforcements are only disclosed in use with the fixation component, not the foam scaffold component. Examiner disagrees because paragraphs 46-49 and 62 describe reinforcement materials such as hydroxyapatite for use with the foam scaffold component.

Claims 1-14 rejected under 35 U.S.C 102(e) in view of Melican et al.

Applicant contends (at page 7 of Appeal Brief) Melican et al. does not disclose an implant comprising a tissue scaffold and a fixation component, where the fixation component comprises a tissue scaffold support and anchor means, and where the tissue scaffold partially encapsulates the fixation component. Examiner disagrees because the broadest reasonable interpretation of the limitations at lines 4-5 of claim 1 does not require the anchor means be located on the fixation component. Rather, the fixation component comprises scaffold support means for supporting the foam tissue scaffold and anchor means. The anchor means as claimed may be present on the foam tissue scaffold or other component of the device as a whole.

For the above reasons, it is believed that the rejections should be sustained.

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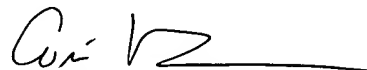
Respectfully submitted,



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March 15, 2005

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